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PTO/SB/33 (07-05)

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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

060258-0290731

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Signature \_\_\_\_\_

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name \_\_\_\_\_

Application Number

10/091,602

Filed

March 7, 2002

First Named Inventor

NIEMELA

Art Unit

2133

Examiner

Tabone Jr., John J.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)☒

attorney or agent of record.

Registration number \_\_\_\_\_

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

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March 30, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐

\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Attorney Docket: 060258-0290731  
Client Reference: T299064US/PYK/KOP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of: KARI  
NIEMELA  
Application No.: 10/091,602

Confirmation Number: 7660

Group Art Unit: 2133

Filed: March 7, 2002

Examiner: Tabone Jr., John J.

Title: QUALITY MEASUREMENT OF CIRCUIT-SWITCHED SERVICE IN CELLULAR  
RADIO

ATTACHMENT SHEETS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Appellants hereby request that a panel of examiners formally review the legal and factual basis of the rejection in the above-identified application prior to the filing of an appeal brief. Appellants assert that the outstanding rejection (now on appeal by virtue of the concurrently filed Notice of Appeal) is clearly improper based upon errors in facts.

As a preliminary matter, Appellants take issue with the Advisory Action's assertion that the amendments to the independent claims require further search and or consideration; clearly, those amendments are merely to correct typographical errors and provide proper antecedent basis. Therefore, the amendments must be entered (in particular for the purposes of appeal)

APPEALED REJECTION

Appellants appeal the rejection of Claims 1, 5, 10, 12, 16, 21, 23, 25, 27, 29 and 31 were rejected under 35 U.S.C. 103(a) as being unpatentable over Rasanen et al. (U.S. 5,920,545; hereafter "Rasanen") in view of Bonta et al. (U.S. 6,097,957; hereafter "Bonta"), claims 2-4, 13-15, 24, 26, 28, 30 and 32 were rejected under 35 U.S.C. 103(a) as being unpatentable over Rasanen and Bonta in view of Hakansson et al. (U.S. 2004/0062274; hereafter "Hakansson") and claims 6-9, 11, 17-20 and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Rasanen, Bonta and Minde et al. (U.S. 6,201,960; hereafter "Minde"). Appellant traverses the prior art rejections because the cited prior art, analyzed

individually or in combination, fail to disclose, teach or suggest all the features recited in the rejected claims.

#### ARGUMENTS FOR TRAVERSAL

Appellant traverses the prior art rejections because Ishikawa, analyzed individually or in combination with the other cited prior art references, fails to disclose, teach or suggest the claimed invention. To establish anticipation or a prima facie case of obviousness the prior art reference(s), when combined as applied, must teach or suggest all the features recited in the rejected claims. However, the cited prior art fails to disclose, teach or suggest the claimed invention including calculation of a quality value for a service transmitted on the traffic channel during the certain time period by subtracting the number of frames transmitted during the certain time period from the number of frames received and correctly decoded during that certain time period, and by dividing the difference obtained by the number of frames transmitted during that certain time period, as recited in independent claims 1, 12, 23, 25, 27, 29 and 31 and their respective dependent claims.

As explained previously, Rasanen merely relates to a GSM system, wherein correctness of each frame is tested at the receiving end. In that configuration, the receiver sends a (negative) acknowledgement using a frame number. Subsequently, the unsuccessfully received frames are retransmitted; only in that way, is the quality of the connection is monitored.

In response to Appellant's arguments for patentability, the Office recognized that Rasanen fails to disclose, teach or suggest the claimed features; however, the Office Action asserted that Rasanen teaches the "quality of a non-transparent connection is monitored (a quality value is calculated) (Col. 3, ll. 17-18);" channel coding FEC (Forward Error Correction is employed on the traffic channel for reducing the effect of transmission errors on the radio path (Col. 5, ll. 4-6); and monitoring the throughput (quality is monitored) may be based on calculating the "sliding or floating" of the success ratio (a quality value is calculated) e.g. with an equation:  $AVE(n+1) = AVE(n) \cdot (1-D) + MEAS \cdot D$ , where  $AVE(i)$  is an average value at instant  $i$ ,  $D$  is a "history co-efficient" ( $0 < D < 1$ ),  $MEAS$  is the last "measurement",  $MEAS=1$  represents re-transmission of a frame,  $0 \leq AVE(i) \leq 1$ . (Col. 8, ll. 4-17).

Apparently, these three points of assertion are meant to support the unstated conclusion of the Office Action that Rasanen somehow implicitly or inherently teaches the claimed feature of calculation of a quality value for a service transmitted on the traffic

channel during the certain time period by subtracting the number of frames transmitted during the certain time period from the number of frames received and correctly decoded during that certain time period, and by dividing a difference obtained by the number of frames transmitted during that certain time period.

However, Appellant submits that Rasanen's passages cited by the Office, and the Office's interpretation of those passages, fail to provide the claimed calculation of the recited quality value in the manner required by the rejected claims.

Col. 3, ll. 17-18 of Rasanen merely teaches that the quality of a non-transparent connection is monitored, and, if the quality of the connection falls to a specific threshold value, a more efficient channel coding scheme is changed for the connection. Although col. 5, ll. 4-6 do disclose that FEC is employed on a traffic channel to reduce the effect of transmission errors on the radio path, Rasanen fails to provide additional detail regarding how FEC channel coding would produce the quality value calculated in the rejected claims.

Moreover, col. 8, lines 4-17 merely teaches on the subject of monitoring the throughput using a sliding or floating of the success ratio. However, the recited equation, analyzed in context of the teachings of Rasanen, or out of context (as the Office has attempted) fails to perform calculation of a quality value for a service transmitted on the traffic channel during the certain time period by subtracting the number of frames transmitted during the certain time period from the number of frames received and correctly decoded during that certain time period, and by dividing a difference obtained by the number of frames transmitted during that certain time period.

Furthermore, Appellant submits that, as indicated for example in rejected claim 5, the claimed receiver is configured to transmit an indication of a number of frames received on a traffic channel and correctly decoded to the transmitter, i.e., the number of frames is transmitted. To the contrary, in Rasanen, the receiving party acknowledges the reception by using the frame number, i.e., each received frame is acknowledged. Therefore, the transmission of an indication of a number of frames recited in claim 5 is not met by the acknowledgement of reception by Rasanen.

Bonta fails to remedy these deficiencies because Bonta (in particular, column 4, lines 41-44 and column 6, lines 13) merely discloses calculation of a frame erasure rate data in a modem simulator. In fact, the frame erasure rate of Bonta is only the fraction of frames erased in relation to the total frames; however, Bonta fails to specify what the "total frames" actually is a measurement of. Moreover, Appellant submits that the claimed invention is not

merely the concept of a frame erasure rate itself, but involves the way the frames are counted. Therefore, Rasanen, analyzed individually or in combination with Bonta, fails to teach or suggest the claimed invention.

Furthermore, Minde also fails to remedy the deficiencies of Rasanen and Bonta because Minde merely teaches monitoring the bit error rate, among other parameters to assess speech quality.

Accordingly, the cited prior art, analyzed individually or in combination fail to disclose, teach or suggest the claimed invention. As a result, claims 1-32 are allowable.

CONCLUSION

Therefore, it is respectfully requested that the panel return a decision concurring with Appellant's position and eliminating the need to file an appeal brief because there are clear legal and/or factual deficiencies in the appealed rejection. Specifically, the subject matter recited of claims 1-32 are allowable.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

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